IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 98 OF 2005

Shrikant Bapu Bhairmakar & Ors..... Appellants.

Versus

Suresh Shankar Bhairamkar & Ors.... Respondents.

Mr. A. N. Chatuphale for the Appellants.

Mr. S. M. Kazi for the Respondents.

CORAM : A. S. OKA, J.

DATED : 21ST APRIL, 2005.

P.C.:

Heard advocates appearing for the parties.

2. A decree for partition has been passed in favour of respondent No.1 / plaintiff. In appeal preferred by some of the defendants, only modification made by the appellate court is regarding the shares.

3. Learned advocate appearing for the appellants invited my attention to various findings recorded by the appellte court and in particular the findings

recorded in paragraphs 23 and 25 of the appellate court judgment. He submitted that the properties which are referred to in paragraph 25 of the judgment ofthe appellate court were purchased by deceased Bapu under the provisions ofthe Bombay Tenancy and Agricultural Lands Act, 1948 and therefore the said properties could not have been held as joint family properties. It is not in dispute that order passed by the Authorities under the said Act of 1948 showing purcahse by Bapu is not placed on record. In my view the said submission has no merit in absence of any documnetary evidence on record.

4. Learned advocate further submitted that the land bearing Survey No.160/5B was purchased by Bapu in the year 1953 by a registered sale deed in his name and on that date the deceased Bapu was employed. He, therefore, submitted that the said property has to be treated as self-acquired property of deceased Bapu. In my view, there is no merit in the said contention. The existence of sufficient nucleus of the income from the joint family properties was established and therefore the entire burden shifted on the appellants who are asserting that the land in question was self-acquired property of deceased Bapu. Merely

saying that Bapu was in employment on that day was not sufficient. Evidence ought to have been led regarding income received by Bapu on the date of acquisition of the property. There is no reason to interfere with the finding of fact recorded by both the courts below in respect of the suit land. As stated earlier in absence of any evidence regarding purcahse by Bapu of the land described in paragraph 25 of the judgment of the appellate court, the contention of the appellant that Bapu had become owner of the said land under the said Act of 1948 cannot be accepted.

5. There is no substantial question of law involved in this second appeal. Second appeal is dismissed with no order as to costs.

6. Parties to act on the authenticated copy of this order.

Sd/-

(A. S. OKA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 137 OF 2003

IN

SECOND APPEAL NO. 98 OF 2005

Shrikant Bapu Bhairmakar & Ors..... Appellants.

Versus

Suresh Shankar Bhairamkar & Ors.... Respondents.

Mr. A. N. Chatuphale for the Appellants.

Mr. S. M. Kazi for the Respondents.

CORAM : A. S. OKA, J.

DATED : 21ST APRIL, 2005.

P.C.:

In view of the dismissal of the second appeal itself, this civil application does not survive. Hence rejected.

Sd/-

(S. A. OKA, J.)